

NORTH CAROLINA
DURHAM COUNTY

LICENSE AGREEMENT FOR LANDSCAPING,
UNDERGROUND IRRIGATION, UP-LIGHTING FOR
STREET TREES AND SPECIALTY PAVERS

THIS LICENSE AGREEMENT, made and entered into as of the ____ day of _____, 20____, by and between the **CITY OF DURHAM**, a municipal corporation ("the City"), and **CONCORD GREENBURG DURHAM HOTEL, LLC**, ("the Licensee");

WITNESSETH:

In consideration of the performance of the conditions hereinafter set forth on the part of the Licensee, the City of Durham hereby grants to the Licensee, a license to construct landscaping, underground irrigation system and up-lighting for street trees to serve Residence Inn at West Main Street, a hotel located at 1108 West Main Street, further described as PIN 0821-07-69-0678.

The Licensee expressly agrees:

- (1) That the installations will be in accordance with the approved plan. Modifications to the plan must be approved by the City Engineering Division.
- (2) The work is to be inspected by, and shall conform to the requirements of, the City Engineering Division.
- (3) The Licensee will assume the cost of installation, maintenance, and repair, including the cost of repairs to the street and pavement associated with the installation, maintenance, and repair of the System.
- (4) The System shall be at a height not greater than 18 inches from the surface of the street.
- (5)(a) To the maximum extent allowed by law, Licensee shall indemnify and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this license (including but not limited to the constructing, maintaining, or repairing the pavement or street and in the installation, preparation, maintenance, or repair of the Systems) as a result of acts or omissions of Licensee or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a", Licensee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City of Durham ("City").
- (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines (including but not limited to those levied by the N.C. Department of Natural Resources and Community Development), penalties, royalties, settlements, and expenses (including interest and

reasonable attorneys' fees assessed as part of any such item); and "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees.

(c) Limitation of Licensee's Obligation. Subsection "a" above shall not require the Licensee to indemnify or hold harmless the City, its independent contractors, agents, employees, or Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the City, its independent contractors, agents, employees, or Indemnitees.

(6) If the City notifies the Licensee that the City will change the grade of the street or perform any work on said street that may interfere with the System, the Licensee shall (i) terminate this license and remove the System as provided in Section 9 below or (ii) make such changes and relocations at the Licensee's expense as may be reasonably necessary so that the System will not interfere with, in any manner, such street work.

(7) At its own expense, the Licensee shall, upon the request of the City, remove or relocate the System if it interferes with the construction, installation, repair, or maintenance of any underground utilities of the City.

(8) This license conveys no real property right or interest in any street or sidewalk area.

(9) Either the Licensee or the City may terminate this license upon ninety (90) days written notice. Within ninety days of receipt of such notice, the Licensee shall remove, at its expense, all materials, equipment, and supplies belonging to it and shall leave the site in as neat, safe, and substantially similar condition as it was upon receipt of the notice.

(10) This license agreement is not transferable and when the property changes ownership, then the new owner will be responsible for either removing the System or applying for a new license agreement.

Concord Greenburg Durham Hotel, LLC

ATTEST:

_____ (Manager)

State of _____
County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of _____, a limited liability company organized and existing under the laws of the State of _____, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20____.

My commission expires: _____

Notary Public

ATTEST

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____